



House of Representatives

General Assembly

File No. 586

February Session, 2000

Substitute House Bill No. 5704

House of Representatives, April 13, 2000

The Committee on Finance, Revenue and Bonding reported through REP. MCDONALD of the 148th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Concerning The Creation Of A Fund To Protect Heirs And Beneficiaries.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) There is hereby established a Probate Guaranty
2 Fund, to be invested by the Treasurer and accounted for by the State
3 Comptroller, and to be funded initially by funds transferred by the
4 Probate Court Administrator from the Probate Court Administration
5 Fund in such amounts as the Probate Court Administrator shall
6 determine, and periodically thereafter by fees paid into the fund by
7 various fiduciaries under the jurisdiction of the probate courts of this
8 state, as provided in section 5 of this act. The purpose of the fund is to
9 reimburse the public for certain losses suffered as a result of the
10 negligent or intentional acts of fiduciaries accountable to the probate
11 courts of the state, acting within their fiduciary capacity. The moneys
12 paid into the fund may be commingled with other assets being
13 managed by the Treasurer, but the Treasurer shall invest such moneys

14 in such a way as to make such moneys available for the purposes for
15 which the fund is created.

16 (b) The Probate Guaranty Fund shall be administered by the Probate
17 Court Administrator, who:

18 (1) Shall adopt rules and procedures to govern the operation of the
19 fund and the filing and processing of claims;

20 (2) Shall inform the public of the availability and the activities of the
21 fund and file an annual report on claims made and presented, as well
22 as amounts disbursed, to the cochairpersons and ranking members of
23 the joint standing committee of the General Assembly having
24 cognizance over judicial matters, the Governor, Attorney General,
25 Treasurer, Chief Justice of the Supreme Court and Chief Court
26 Administrator;

27 (3) Shall receive, investigate and evaluate claims for reimbursement,
28 as well as determine the amount of reimbursement, the terms of
29 payment and the period over which payment shall be made;

30 (4) May refer claims for restitution to the Attorney General,
31 pursuant to section 6 of this act;

32 (5) May enter into such contractual agreements as may be necessary
33 for the discharge of the fund's duties under this act, including the
34 hiring of legal counsel with the approval of the Attorney General;

35 (6) Shall prepare a budget and submit it to the executive committee
36 of the Probate Assembly not later than October 1, 2001, and annually
37 thereafter.

38 Sec. 2. (NEW) (a) Upon any interested party's application alleging
39 that a fiduciary has breached a fiduciary duty which may have
40 resulted in a financial loss to an estate, or upon the probate court's own
41 motion, the probate court having jurisdiction over the fiduciary's estate

42 shall, after providing reasonable notice to the fiduciary and such other
43 interested parties as the probate court shall determine, hold a hearing
44 to determine whether such breach occurred and the actual loss
45 sustained by the estate. The judge shall determine the proportionate
46 share of the loss for which each person, including any fiduciary,
47 claimant or other party, is liable. In those cases in which there is only
48 one fiduciary, if that fiduciary has breached a fiduciary duty to an
49 estate and that fiduciary is also a beneficiary of the estate, such
50 fiduciary shall not be entitled to any payment from the Probate
51 Guaranty Fund. In those cases in which there are multiple fiduciaries,
52 a fiduciary who is also a beneficiary may recover from the fund if such
53 fiduciary did not in any way contribute to the loss sustained by the
54 estate. In those cases in which an estate has sustained a financial loss as
55 a result of the negligence of one or more beneficiaries, the negligent
56 beneficiary may recover from the fund a prorated amount if the
57 negligence of that beneficiary is less than fifty per cent of the total
58 negligence accounting for the loss. If the negligence of that beneficiary
59 is fifty per cent or greater, that beneficiary shall not be entitled to
60 receive any payment from the fund. If the loss attributable to any
61 beneficiary is less than fifty per cent, such beneficiary shall be entitled
62 to receive that percentage of the loss of such beneficiary which was not
63 caused by the negligence of such beneficiary. No person, whether a
64 beneficiary or a fiduciary, whose intentional or reckless conduct has
65 contributed to the loss, shall receive any payment from the fund. Any
66 aggrieved party may appeal a decision or determination of the probate
67 court in accordance with sections 45a-186 to 45a-193, inclusive, of the
68 general statutes. The burden of proof regarding claims against a
69 fiduciary and by a fiduciary against any other party, within the context
70 of sections 1 to 9, inclusive, of this act, shall be by a fair preponderance
71 of the evidence.

72 (b) The probate court shall provide the administrator of the fund
73 with notice of a hearing to be held pursuant to subsection (a) of this
74 section. The administrator, or the designee of the administrator, may

75 participate fully in that hearing, examine and cross-examine witnesses,
76 subpoena witnesses, and take any other action which any other party
77 could take in that hearing, including, but not limited to, the taking of
78 an appeal to the Superior Court.

79 (c) Any party to the probate court hearing under subsection (a) of
80 this section, including a successor fiduciary acting on behalf of the
81 estate, may seek an order of restitution from the probate court against
82 the fiduciary found by the probate court to have breached a fiduciary
83 duty resulting in a financial loss to an estate. Such order of restitution
84 may include, but shall not be limited to, orders of restoration or
85 surcharge or such other equitable or legal relief to which the petitioner
86 may be entitled. Following notice and hearing, the probate court shall
87 determine the amount of the order of restitution payable either to the
88 successor fiduciary on behalf of the entire estate or to the individual
89 parties. Any party aggrieved by the order of the probate court may
90 appeal to the Superior Court in accordance with the provisions of
91 sections 45a-186 to 45a-193, inclusive, of the general statutes. If no
92 timely appeal of the order is taken, such order shall be final and may
93 be enforced in the same manner as a judgment of the Superior Court.
94 The Superior Court may issue execution upon any final order in the
95 same manner as a judgment rendered by the Superior Court. Upon the
96 filing of an application for execution of such order and a copy of such
97 order certified by the probate court, the Superior Court may also
98 award interest and attorney's fees.

99 Sec. 3. (NEW) (a) If an order of restitution is not collectible from the
100 responsible parties or responsible sources, any person who is entitled
101 to receive funds pursuant to an order of restitution may submit a claim
102 for payment from the Probate Guaranty Fund on forms provided by
103 the administrator, containing sufficient information upon which the
104 administrator can make a determination of the issues, and shall be
105 sworn to by the claimant. The written claim shall include a certified
106 copy of all relevant orders of the probate court and any other

107 information required by the administrator.

108 (b) Upon receipt of the attested claim together with the certified
109 copy of the court documents and any other documentation required by
110 the administrator, the administrator or the designee of the
111 administrator shall inspect such documents for their veracity. Upon a
112 determination that such documents are complete and authentic, and a
113 determination that the claimant has otherwise complied with the
114 requirements of sections 1 to 9, inclusive, of this act and any
115 regulations promulgated thereunder, the administrator shall
116 determine the amount to be paid to the claimant and shall issue an
117 invoice to the Comptroller authorizing and directing such payment
118 from the fund. Such payment shall not exceed one hundred thousand
119 dollars for the total losses caused by the fiduciary or cofiduciaries of an
120 estate, whether those losses involved one or more breaches of fiduciary
121 duty by one or more fiduciaries. The fund shall not pay any claim
122 involving any estate unless the mandatory fee has been paid to the
123 appropriate court in accordance with the provisions of section 5 of this
124 act.

125 (c) To receive payments under sections 1 to 9, inclusive, of this act,
126 the claimant shall also demonstrate to the administrator the reasonable
127 attempts made to gain restitution from the responsible parties and all
128 other available sources of payment. Such an attempt shall be deemed
129 reasonable if a demand for payment has been made upon the
130 responsible party and other available sources of payment, including
131 the filing of an application for permission to sue on a probate bond, if
132 any, bona fide negotiations have been attempted, and no restitution
133 has been made. As a condition of payment from the fund, the claimant
134 shall execute and deliver to the fund a subrogation agreement in form
135 and substance acceptable to the administrator. The agreement shall
136 empower the fund to assert the claimant's order of restitution against
137 responsible parties and responsible sources, up to the amount of
138 payments made by the fund to the claimant plus reasonable

139 administrative and collection costs incurred by the fund to enforce the
140 order. The fund may enforce the order of restitution in the same
141 manner as a judgment of the Superior Court. Upon the filing of an
142 application for the execution of such order and a copy of such order
143 certified by the Probate Court, the Superior Court may also award
144 interest and attorney's fees.

145 (d) The fund shall have a lien upon the real and personal property
146 of the estate in which the breaching fiduciary had an interest as of the
147 date title to such property vested in the fiduciary. The amount of the
148 lien shall be the gross amount of the loss to the estate resulting from
149 the fiduciary's improper conduct, including interest and attorney's fees
150 as otherwise allowed by law or sections 1 to 9, inclusive, of this act, but
151 subsequently reduced by any third party payments to the estate or
152 injured beneficiaries. Upon satisfaction of that lien by the fiduciary or
153 any other person, the administrator shall execute a release of lien on
154 behalf of the fund, or may, in appropriate cases, substitute additional
155 security for property for which the fiduciary requests a release of lien.
156 The lien created by sections 1 to 9, inclusive, of this act shall not be
157 valid as against any bona fide purchaser, mortgagee, lienor or
158 judgment creditor provided they have no notice of such lien, unless
159 and until notice of such lien is filed or recorded in the town clerk's
160 office.

161 Sec. 4. (NEW) In no event shall the Probate Guaranty Fund be liable
162 for losses incurred by the acts of the trustee of an inter vivos trust or
163 the acts of the holder of a power of attorney, despite the probate
164 court's assumption of jurisdiction over the inter vivos trust or power
165 of attorney. In the event that the probate court finds that a fiduciary
166 whose improper conduct resulted in losses to the estate, is protected
167 by the provisions of sections 1 to 9, inclusive, of this act is also an
168 attorney licensed to practice law in this state or any other professional
169 licensed by this state, no payment from the fund shall be made until
170 the Client Security Fund of the state or any other similar fund has

171 determined whether or not any portion of the beneficiary's loss shall be
172 paid by that fund. If the loss is subject to a payment by the Client
173 Security Fund, the Probate Guaranty Fund shall be responsible for no
174 more than one-half of the loss, not to exceed fifty thousand dollars.

175 Sec. 5. (NEW) (a) A fiduciary of any estate appointed by a probate
176 court on or after the effective date of this act shall pay to the court, as a
177 condition of qualification of appointment, and annually thereafter on
178 the anniversary date of the appointment, a sum determined by the
179 administrator, from time to time, to be actuarially sufficient to
180 maintain the integrity of the Probate Guaranty Fund, but not to exceed
181 a sum equal to (1) twenty-five dollars, if the value of the assets of the
182 estate is less than fifty thousand dollars, and (2) fifty dollars, if the
183 value of the assets of the estate is equal to or greater than fifty
184 thousand dollars. Unless payment is made as required, no coverage
185 under the Probate Guaranty Fund shall be provided. For any fiduciary
186 appointed before the effective date of this act, each probate court shall
187 collect the same fee from each fiduciary at the time the fiduciary's
188 periodic account is heard when that fiduciary is a trustee, guardian or
189 conservator, and, when the fiduciary is an executor or administrator,
190 at the anniversary of the fiduciary's appointment. All successor
191 fiduciaries subsequently appointed by the probate courts shall also
192 make the same payment as a condition of their qualification for
193 appointment. Any such payment by any fiduciary or successor
194 fiduciary shall be paid as an expense of administration of the estate.
195 Any fiduciary who has prepaid a probate bond premium for more
196 than a one-year period, whose bond equals or exceeds the value of the
197 assets of the estate, shall not be subject to the payment of an additional
198 annual fee, provided the probate court has determined that further
199 protection by the fund is unnecessary. Notwithstanding the provisions
200 of this section, the fiduciary of a decedent's estate shall not be liable for
201 payment of any fee on the first anniversary date of such fiduciary's
202 qualification if such fiduciary files a final account within fourteen
203 months of such fiduciary's qualification and the probate court

204 subsequently approves such account; except that if such fiduciary fails
205 to file a final account within such fourteen-month period or if the
206 probate court fails to approve such account, such fiduciary shall be
207 liable for the payment of the annual fee as provided in this section
208 within ten days of notice that such fee is due and shall pay such annual
209 fee on any subsequent anniversary of such fiduciary's qualification.

210 (b) The trustees of inter vivos trusts, holders of a power of attorney
211 and any agency appointed as conservator, even if subject to the
212 jurisdiction of the probate court, shall not be obligated to make such
213 payments.

214 (c) The conservator of a ward or the guardian of a minor whose net
215 estate is less than five thousand dollars and whose monthly income is
216 less than one thousand dollars shall not be required to make payments
217 to the fund, but the beneficiaries of those estates shall nonetheless be
218 entitled to recovery under sections 1 to 9, inclusive, of this act.

219 Sec. 6. (NEW) The administrator may seek the assistance of the
220 Attorney General in attempting to recover from all responsible parties
221 any amount paid by the Probate Guaranty Fund to an injured party.
222 Any funds recovered, after the payment of the disbursements and
223 expenses of the Attorney General, shall be paid to the fund.

224 Sec. 7. (NEW) If the administrator of the Probate Guaranty Fund
225 determines, after an actuarial study, that the fund has a surplus
226 beyond that reasonably needed to carry out the purposes of the fund,
227 the administrator may request a transfer of that surplus to the Probate
228 Court Administration Fund, not to exceed the amount paid by the
229 Probate Court Administration Fund to the Probate Guaranty Fund.
230 Any further surplus shall be utilized to reduce the payments made by
231 the fiduciaries to the various probate courts pursuant to section 5 of
232 this act, or, in the alternative, may be used to increase the maximum
233 amount of payments made to injured parties under sections 1 to 9,
234 inclusive, of this act.

235 Sec. 8. (NEW) (a) In order to preserve the fiscal integrity of the
236 Probate Guaranty Fund, the administrator, in the sole discretion of the
237 administrator, may order payment from the fund in an amount less
238 than the actual loss incurred by the claimant or less than the order of
239 restitution awarded by the probate court.

240 (b) If the moneys deposited in the fund are insufficient to satisfy any
241 duly authorized claim or portion thereof, the administrator shall, when
242 sufficient moneys have been deposited in the fund, satisfy such unpaid
243 claims or portions thereof, in the order that such claims or portions
244 thereof were originally determined.

245 Sec. 9. (NEW) The remedies provided in sections 1 to 8, inclusive, of
246 this act are in addition to and not in derogation of or a substitute for
247 other rights and remedies that may exist.

248 Sec. 10. Section 45a-163 of the general statutes is repealed and the
249 following is substituted in lieu thereof:

250 (a) Upon the written application of any fiduciary described in
251 section 45a-164, after such notice which the court may order and after
252 hearing, the Court of Probate may authorize a person other than the
253 fiduciary to sell the whole or any part of or any interest in any personal
254 property of any incapable person, minor, missing person, deceased
255 person or trustee, or any property to which the fiduciary may hold
256 legal title in such capacity, if: (1) Such person has first given a probate
257 bond as required by the court and that [he] such person will faithfully
258 administer and account for the proceeds of the sale according to law;
259 and (2) the court finds that to grant the application would be in the
260 best interests of the parties in interest. If any party having an interest in
261 such personal property is not in being or is not ascertained or is under
262 a disability, the court shall appoint a guardian ad litem to represent the
263 interest of such party at the hearing, unless such party already is
264 represented by a guardian or by a conservator. Such order, and the
265 sale thereunder, shall be conclusive upon all persons then or thereafter

266 existing whose interests have been so represented.

267 (b) The person selling the personal property shall pay to the
268 fiduciary the sum for which such personal property was sold.

269 (c) The Court of Probate shall direct whether the sale shall be public
270 or private, and, if public, the notice thereof which shall be given, and,
271 if private, may authorize the sale at a price and upon terms, including
272 such mortgage or mortgages, as it considers reasonable or advisable.

273 Sec. 11. Section 45a-242 of the general statutes is repealed and the
274 following is substituted in lieu thereof:

275 (a) If any fiduciary becomes incapable of executing [his] such
276 fiduciary's trust, neglects to perform the duties of [his] such fiduciary's
277 trust, wastes the estate in [his] such fiduciary's charge, or fails to
278 furnish any additional or substitute probate bond ordered by the court,
279 the court of probate having jurisdiction may, upon its own motion, or
280 upon the application and complaint of any person interested or of the
281 surety upon the fiduciary's probate bond, after notice and a hearing,
282 remove such fiduciary.

283 (b) The court of probate, after notice and hearing, may accept or
284 reject the written resignation of any fiduciary, but such resignation
285 shall not be accepted until such fiduciary has fully and finally
286 accounted for the administration of [his] such fiduciary's trust to the
287 acceptance of such court.

288 (c) Trustees appointed by a testator to execute a trust created by will
289 and testamentary guardians may resign or be removed, and the
290 vacancies filled by the court having jurisdiction in the manner
291 provided under this section, unless otherwise provided by the will.

292 (d) Except as otherwise provided in subsection (c) of this section,
293 upon the death, removal or acceptance of the resignation of any
294 fiduciary before the completion of [his] the duties of a fiduciary, the

295 court of probate may appoint a suitable person to fill the resultant
296 vacancy. [and such] Such successor fiduciary [shall] may be required
297 to give a probate bond in such amount as the court deems necessary to
298 protect the estate.

299 (e) All suits in favor of or against the original fiduciary shall survive
300 to and may be prosecuted by or against the person appointed to
301 succeed [him] such fiduciary.

302 Sec. 12. Section 45a-290 of the general statutes is repealed and the
303 following is substituted in lieu thereof:

304 (a) If no person has been designated in a will to be executor, or if the
305 person designated in the will to be executor has died or refuses to
306 accept or is incapable of accepting such trust, and no alternate or
307 successor has been named, the court shall commit the administration
308 of the estate, with the will annexed, to any person or persons in
309 accordance with the order of priority for the appointment of
310 administrators under subsection (c) of section 45a-303, except that any
311 person who is entitled to a bequest or devise under such will, or his or
312 her designee, shall have priority over a person who is not so entitled,
313 or on the objection of any one interested under such will or of any
314 creditor, which objection is found reasonable by the court, the court
315 may commit the administration of the estate, with the will annexed, to
316 any person whom the court deems proper. [, taking a probate bond]
317 Any such person so appointed may be required to give a probate bond
318 in such amount as the court deems necessary to protect the estate.

319 (b) If during the settlement of an estate, the executor or the
320 administrator with the will annexed appointed by the court dies or
321 resigns or is removed from such trust, and no alternate or successor
322 has been named in the will, the court shall appoint an administrator of
323 the estate with the will annexed, de bonis non, subject to the same
324 provisions as to hearing, notice, waiver of or order dispensing with
325 notice, selection of the administrator and bond, as are stated in this

326 section and section 45a-286.

327 (c) If the person designated in the will to be executor has died or
328 refuses to accept or is incapable of accepting such trust, or if during the
329 settlement of the estate, the executor appointed by the court dies, or
330 resigns or is removed from such trust, and the will names an alternate
331 or a successor, the court shall appoint such alternate or successor
332 executor named in said will as executor, who shall have all the powers
333 and duties as provided in the will. Such appointment shall be subject
334 to the same provisions as to hearing, notice, waiver of or order
335 dispensing with notice, and bond, as are stated in this section and
336 sections 45a-286 and 45a-289.

337 Sec. 13. Section 45a-303 of the general statutes is repealed and the
338 following is substituted in lieu thereof:

339 (a) (1) When any person domiciled in this state dies intestate, the
340 court of probate in the district in which the deceased was domiciled at
341 his death shall have jurisdiction to grant letters of administration.

342 (2) When any person not domiciled in this state dies intestate,
343 administration may be granted by the Court of Probate determined
344 under the jurisdictional prerequisites provided in subsection (a) of
345 section 45a-287 for nondomiciliary testators, and the provisions of
346 subsection (d) of section 45a-287 regarding Probate Court costs
347 applicable to testate estates shall apply also to intestate estates granted
348 administration under this section.

349 (b) Upon application for letters of administration to the court of
350 probate having jurisdiction of the estate of an intestate decedent, the
351 court shall, before granting letters of administration, after notice
352 required by this section, hold a hearing. Notice of such hearing, either
353 public notice, personal notice or both as the court deems best, shall be
354 given to all persons interested in such estate, including the
355 Commissioner of Revenue Services in the case of a nondomiciliary

356 decedent, unless all persons so interested sign and file in court a
357 written waiver of such notice, or unless the court, for cause shown,
358 dispenses with such notice. The finding by the court that such estate is
359 not more than sufficient to pay the expenses of administration, the
360 funeral and last sickness shall be sufficient cause to dispense with such
361 notice.

362 (c) (1) Upon hearing as required by this section, the court of probate
363 having jurisdiction shall grant administration of the intestate
364 decedent's estate to any one or more persons or their designees
365 appointed in the following order, provided such person or persons are
366 entitled to share in the estate of the decedent: (A) The surviving
367 spouse, (B) any child of the decedent or any guardian of such child as
368 the court shall determine, (C) any grandchild of the decedent or any
369 guardian of such grandchild as the court shall determine, (D) the
370 decedent's parents, (E) any brother or sister of the decedent, (F) the
371 next of kin entitled to share in the estate, or, on their refusal, incapacity
372 or failure to give bond or upon the objection of any heir or creditor to
373 such appointment found reasonable by the court, to any other person
374 whom the court deems proper.

375 (2) If the intestate decedent lived out of the state leaving property
376 within the state, the court of probate having jurisdiction shall, upon
377 notice and hearing as required by this section, grant administration to
378 such person as the court deems proper.

379 (d) The court, upon granting any administration, [shall] may take a
380 probate bond from the administrator or any successor administrator
381 appointed by the Court of Probate in such amount as the court deems
382 necessary to protect the estate.

383 Sec. 14. Section 45a-316 of the general statutes is repealed and the
384 following is substituted in lieu thereof:

385 Whenever, upon the application of a creditor or other person

386 interested in the estate of a deceased person, it is found by the court of
387 probate having jurisdiction of the estate that the granting of
388 administration on the estate or the probating of the will of the
389 deceased will be delayed, or that it is necessary for the protection of
390 the estate of the deceased, the court may, with or without notice,
391 appoint a temporary administrator to hold and preserve the estate
392 until the appointment of an administrator or the probating of the will.
393 The court [shall] may require from such administrator a probate bond.
394 If the court deems it more expedient, it may order any deputy sheriff
395 or constable to take possession of the estate until the appointment of
396 an administrator or executor.

397 Sec. 15. Section 45a-326 of the general statutes is repealed and the
398 following is substituted in lieu thereof:

399 (a) During the settlement of the estate of any person who died
400 owning an undivided interest in any property not specifically devised
401 or bequeathed, the executor or administrator of the estate and the
402 owner or owners of the major portion of the other interest therein may
403 apply in writing to the court of probate having jurisdiction of the estate
404 to order partition of the same.

405 (b) Unless the petition for the partition of such interest in property is
406 signed by all the persons in interest, or the guardians of such of them
407 as are minors, or the conservators of such of them as are incapable
408 persons having conservators, the court shall, following public notice,
409 fully hear the case and make all orders as the interests of the parties
410 and the estate demand. In such case the court shall not order partition
411 unless upon full hearing it appears that the best interests of the estate
412 and of the parties concerned will be promoted thereby.

413 (c) If, upon such petition, it is the opinion of the court of probate
414 that a sale will better promote the interests of the owners, or that the
415 property cannot be beneficially divided for the purpose of distribution,
416 it may order the sale of any or all such property in such manner and

417 upon such notice as it deems expedient; but unless the petition for the
418 partition or sale of such interest in property is signed by all the persons
419 in interest, or the guardians of such of them as are minors, or the
420 conservators of such of them as are incapable persons having
421 conservators, the court shall, following public notice, fully hear the
422 case and make all orders as the interests of the parties and the estate
423 demand. In such case the court shall not order sale unless upon full
424 hearing it appears that the best interests of the estate and of the parties
425 concerned will be promoted thereby. An order to sell pursuant to this
426 section shall not be made until the executor, administrator or person
427 designated to sell gives a probate bond to secure the execution of his
428 trust according to the order of the court and according to law unless
429 the probate court dispenses with the requirement of a probate bond as
430 provided in section 45a-169.

431 (d) The court may appoint for the purpose of partitioning such
432 property a committee of three disinterested persons, who shall be
433 sworn and shall make a return of their actions to the court according to
434 the order thereof. Such partition, when so made and returned to and
435 accepted by the court, and all orders and decrees relating thereto, shall
436 bind all persons interested therein and their heirs.

437 (e) The portion set to the estate of the deceased person shall be
438 treated as if the same had been partitioned in the lifetime of such
439 deceased person by a court of competent jurisdiction.

440 (f) If the property so partitioned is real property, a copy of such
441 decree shall be recorded upon the land records of the town in which
442 such land is situated.

443 (g) If the name or residence of any party entitled to share in the
444 proceeds of property so sold is unknown to the court and cannot be
445 ascertained, it shall appoint a trustee for the share of such party. Such
446 trustee shall give a probate bond if ordered by the court, and shall hold
447 such share until demanded by the person or persons entitled thereto.

448 Sec. 16. Section 45a-451 of the general statutes is repealed and the
449 following is substituted in lieu thereof:

450 When a life estate in any personal property is given by will to one
451 with remainder to another, and there is no trustee named for such
452 property during the continuance of the life estate therein, the court of
453 probate having jurisdiction of such will may order the executor to
454 deliver such personal property to the person having the life estate
455 upon [his] the executor's giving a probate bond. It shall be the duty of
456 the person having the life estate thereupon to safely and properly keep
457 such property to be delivered to the person entitled to receive it on the
458 determination of the life estate therein. If such person fails to give
459 bond as provided in this section, the court shall appoint a trustee for
460 such property during the continuance of such life estate who shall give
461 a probate bond if ordered by the court. The annual expense of such
462 trust shall be chargeable upon the annual income of such property.

463 Sec. 17. Section 45a-473 of the general statutes is repealed and the
464 following is substituted in lieu thereof:

465 When a testator has appointed a trustee to execute a trust created by
466 [his] the testator's will, the court of probate having jurisdiction of the
467 settlement of [his] the testator's estate shall, unless otherwise provided
468 in the will, or excused by the court, require of such trustee a probate
469 bond. If any trustee refuses to give such bond, the refusal shall be
470 deemed a refusal to accept or perform the duties of such trust; but the
471 bond without surety of any public or charitable corporation or
472 cemetery association to which any bequest or devise is made in trust
473 shall be deemed sufficient. Whenever by any will it is provided that
474 the trustee or trustees thereunder shall not be required to give a
475 probate bond, or shall be required to give a bond which in the
476 judgment of the court of probate having jurisdiction is insecure or
477 inadequate, the court may, upon the application of any person
478 interested, require such trustee or trustees at any time to furnish a

479 probate bond in accordance with section 45a-139.

480 Sec. 18. Section 45a-474 of the general statutes is repealed and the
481 following is substituted in lieu thereof:

482 When any person has been appointed trustee of any estate, or holds
483 as trustee the proceeds of any estate sold, and no provision is made by
484 law or by the instrument under which his appointment is derived for
485 the contingency of his death or incapacity or for his refusal to accept
486 such trust or for his resignation of such trust, or when a trust has been
487 created by will and no trustee has been appointed in the will or when
488 more than one trustee has been appointed and thereafter a trustee so
489 appointed dies, becomes incapable, refuses to accept or resigns such
490 trust, the court of probate of the district within which the estate is
491 situated, or, when the trust has been created by will, in the district
492 having jurisdiction of such will, may, on the happening of any such
493 contingency, appoint some suitable person to fill such vacancy. [,
494 taking] The court may take from [him] such person a probate bond,
495 unless in the case of a will it is otherwise provided therein, in which
496 case the provisions of section 45a-473 shall apply.

497 Sec. 19. Section 45a-478 of the general statutes is repealed and the
498 following is substituted in lieu thereof:

499 (a) When any person having property has disappeared so that after
500 diligent search [his] such person's whereabouts cannot be ascertained,
501 the court of probate in the district in which [he] such person resided or
502 had [his] a domicile at the time of [his] such person's disappearance or,
503 if such person resided outside of this state, then in the district in which
504 any of [his] such person's property is situated, upon the application of
505 the spouse, or a relative, creditor or other person interested in the
506 property of such person, or the selectmen of the town where such
507 person last resided, or in which such property is situated, shall, after
508 public notice and a hearing thereon, appoint a trustee of the property
509 of such person.

510 (b) Diligent search shall be deemed to have been made for any
511 person who has disappeared while serving with the armed forces
512 when such person has been reported or listed as missing, missing in
513 action, interned in a neutral country or beleaguered, besieged or
514 captured by an enemy.

515 (c) Such trustee [, upon giving] may be required to furnish a probate
516 bond [.] in such amount as the court deems necessary for the
517 protection of the estate. Such trustee shall have charge of such
518 property, and [he] such trustee shall have the same powers, duties and
519 obligations as a conservator of the estate of an incapable person. With
520 the approval of the court of probate, such trustee may use any portion
521 of the income or principal of such property for the support of the
522 spouse and minor children of such person.

523 (d) Upon its own motion or upon the application of any interested
524 person, the court of probate may, after public notice and a hearing
525 thereon, remove, discharge, require an accounting from, or appoint a
526 successor to, such trustee.

527 (e) The court of probate may continue such trustee in office until
528 satisfactory proof of the death of such person is furnished, until
529 proceedings are taken to settle [his] the estate of such person on the
530 presumption of [his] death of such person under the provisions of
531 section 45a-329, or for a period of seven years from the time of the
532 disappearance of such person if [he] such person remains unheard of.

533 (f) In case of the reappearance of such person, the court of probate
534 shall, on [his] the application of such person, after hearing and public
535 notice thereof, order the restoration of such property to the person
536 entitled thereto and the discharge of such trustee, after acceptance of
537 the trustee's account.

538 Sec. 20. Section 45a-596 of the general statutes is repealed and the
539 following is substituted in lieu thereof:

540 (a) The surviving parent of any minor may by will appoint a person
541 or persons as guardian or coguardians of the person of such minor, a
542 guardian or coguardians of the estate or both. Such appointment shall
543 not supersede the previous appointment of a guardian made by the
544 court of probate having jurisdiction.

545 (b) The ward of a testamentary guardian may, when he or she is
546 over the age of twelve, apply to the court of probate in which such
547 ward resides, for the substitution of a guardian or coguardians of [his
548 person] such ward to supersede the testamentary guardian. The court
549 of probate may, upon such application and hearing, substitute such
550 guardian or coguardians chosen by such ward to be the guardian or
551 coguardians of the person of the ward.

552 (c) Any guardian or coguardians appointed pursuant to this section
553 shall receive the trust subject to the control of the court of probate as
554 specified in this section and subject to the provisions and restrictions to
555 which the trust was subject in the hands of the parent at the time of
556 [his] such parent's decease. A guardian or coguardians of the person
557 shall furnish a written acceptance of guardianship and, if the court
558 deems it necessary for the protection of the minor, a probate bond. A
559 guardian or coguardians of the estate [shall] may be required to
560 furnish a probate bond in such amount as the court deems necessary
561 for the protection of the estate. Upon such acceptance of guardianship
562 or furnishing such bond, such guardian or coguardians shall have the
563 same power over the person and estate of such minor as guardians
564 appointed by the court of probate.

565 Sec. 21. Subsection (b) of section 45a-629 of the general statutes, as
566 amended by section 5 of public act 99-84, is repealed and the following
567 is substituted in lieu thereof:

568 (b) If the court finds that there is no guardian of the estate of the
569 minor, it may appoint one or both of the parents or any guardian of the
570 person of the minor to be guardian of his or her estate. If neither parent

571 nor the guardian of the person of the minor will accept the
572 appointment, or if the parents or guardian of the person of the minor
573 are not proper persons to act as guardian of his or her estate, the court
574 may appoint any proper person or persons chosen by the minor if the
575 minor is twelve years of age or over. If the minor neglects to make
576 choice or fails to choose a proper person or persons or is not of
577 sufficient age, the court of probate shall appoint some proper person or
578 persons, who, as guardian of the estate of the minor, shall have charge
579 of all the minor's property, whether acquired before or after the
580 guardian's appointment, but shall have no control over such minor's
581 person. If any minor who has a guardian marries and owns or
582 thereafter acquires property, the guardianship of such property shall
583 continue during such person's minority. Any guardian so appointed
584 [shall] may be required to give a probate bond in such amount as the
585 court deems necessary for the protection of the estate.

586 Sec. 22. Section 45a-650 of the general statutes is repealed and the
587 following is substituted in lieu thereof:

588 (a) At any hearing for involuntary representation, the court shall
589 receive evidence regarding the condition of the respondent, including
590 a written report or testimony by one or more physicians licensed to
591 practice medicine in the state who have examined the respondent
592 within thirty days preceding the hearing. The report or testimony shall
593 contain specific information regarding the disability and the extent of
594 its incapacitating effect. The court may also consider such other
595 evidence as may be available and relevant, including but not limited to
596 a summary of the physical and social functioning level or ability of the
597 respondent, and the availability of support services from the family,
598 neighbors, community, or any other appropriate source. Such evidence
599 may include, if available, reports from the social work service of a
600 general hospital, municipal social worker, director of social service,
601 public health nurse, public health agency, psychologist, coordinating
602 assessment and monitoring agencies, or such other persons as the

603 court deems qualified to provide such evidence. The court may waive
604 the requirement that medical evidence be presented if it is shown that
605 the evidence is impossible to obtain because of the absence of the
606 respondent or his or her refusal to be examined by a physician or that
607 the alleged incapacity is not medical in nature. If this requirement is
608 waived, the court shall make a specific finding in any decree issued on
609 the petition stating why medical evidence was not required.

610 (b) Notwithstanding the provisions of section 45a-7, the court may
611 hold the hearing on the application at a place within the state other
612 than its usual courtroom if it would facilitate attendance by the
613 respondent.

614 (c) If the court finds by clear and convincing evidence that the
615 respondent is incapable of managing his or her affairs, the court shall
616 appoint a conservator of his or her estate unless it appears to the court
617 that such affairs are being managed properly without the appointment
618 of a conservator. If the court finds by clear and convincing evidence
619 that the respondent is incapable of caring for himself or herself, the
620 court shall appoint a conservator of his or her person unless it appears
621 to the court that the respondent is being cared for properly without the
622 appointment of a conservator.

623 (d) When determining whether a conservator should be appointed
624 and in selecting a conservator to be appointed for the respondent, the
625 court shall be guided by the best interests of the respondent. In making
626 such determination, the court shall consider whether the respondent
627 had previously made alternative arrangements for the care of his
628 person or for the management of his affairs, including, but not limited
629 to, the execution of a valid durable power of attorney, the appointment
630 of a health-care agent or other similar document. The respondent may,
631 by oral or written request, if at the time of the request he or she has
632 sufficient capacity to form an intelligent preference, nominate a
633 conservator who shall be appointed unless the court finds the

634 appointment of the nominee is not in the best interests of the
635 respondent. In such case, or in the absence of any such nomination, the
636 court may appoint any qualified person, authorized public official or
637 corporation in accordance with subsections (a) and (b) of section 45a-
638 644.

639 (e) Upon the request of the respondent or his or her counsel, made
640 within thirty days of the date of the decree, the court shall make and
641 furnish findings of fact to support its conclusion.

642 (f) [If the court appoints a conservator of the estate of the
643 respondent, it shall require a probate bond.] Any conservator so
644 appointed may be required to give a probate bond in such amount as
645 the court deems necessary for the protection of the estate. The court
646 may, if it deems it necessary for the protection of the respondent,
647 require a bond of any conservator of the person appointed hereunder.

648 (g) The court may limit the powers and duties of either the
649 conservator of the person or the conservator of the estate, to include
650 some, but not all, of the powers and duties set forth in subsections (a)
651 and (b) of section 45a-644, sections 45a-655 and 45a-656, and shall
652 make specific findings to justify such a limitation, in the best interests
653 of the ward. In determining whether or not any limitations should be
654 imposed, the court shall consider the abilities of the ward, the prior
655 appointment of any attorney-in-fact, health care agent, trustee or other
656 fiduciary acting on behalf of the ward, any support services which are
657 otherwise available to the ward, and any other relevant evidence. The
658 court may modify its decree upon any change in circumstances.

659 Sec. 23. Subsection (c) of section 45a-659 of the general statutes, as
660 amended by section 29 of public act 99-84, is repealed and the
661 following is substituted in lieu thereof:

662 (c) The conservator of the estate for the property in this state [shall]
663 may be required to give a probate bond in such amount as the court

664 deems necessary for the protection of the estate, and shall, within two
665 months after the date of his or her appointment, make and file in the
666 court of probate, under penalty of false statement, an inventory of all
667 the real property and tangible personal property in this state of the
668 incapable person, appraised or caused to be appraised, by such
669 conservator, at fair market value as of the date of the conservator's
670 appointment.

671 Sec. 24. Section 45a-668 of the general statutes is repealed and the
672 following is substituted in lieu thereof:

673 Guardians of the property, and limited guardians of the property, of
674 persons who are not minors and who are mentally retarded persons,
675 appointed as such guardians or limited guardians under chapter 779a
676 prior to October 1, 1982, shall serve on or after October 1, 1982, as
677 conservators of the estates of such persons as if appointed conservators
678 under the provisions of sections 45a-644 to 45a-662, inclusive, and in
679 accordance with the provisions of said sections. Any guardian of the
680 person or property of a minor person who is mentally retarded,
681 appointed under chapter 779a, prior to October 1, 1982, may continue
682 to serve as such guardian on or after October 1, 1982, as if appointed
683 under and in accordance with the provisions of sections 45a-132, 45a-
684 593 to 45a-597, inclusive, 45a-603 to 45a-662, inclusive, 45a-629 to 45a-
685 638, inclusive, relative to guardians of minors. Such guardianship shall
686 terminate upon the minor reaching the age of eighteen. Continuation
687 of the guardianship of the estate shall be by application made pursuant
688 to the provisions of sections 45a-644 to 45a-662, inclusive. Continuation
689 of the guardianship of the person shall be by application made
690 pursuant to the provisions of sections 45a-668 to 45a-684, inclusive.
691 Any guardian of the person of a mentally retarded person who is not a
692 minor, appointed under chapter 779a prior to October 1, 1982, may
693 continue to serve as such guardian after October 1, 1982. Upon filing of
694 a periodic account by any guardian appointed under the provisions of
695 chapter 779a, prior to October 1, 1982, the court [shall] may require a

696 probate bond in the same manner as under sections 45a-132, 45a-593 to
697 45a-597, inclusive, 45a-603 to 45a-622, inclusive, 45a-629 to 45a-638,
698 inclusive, or 45a-644 to 45a-662, inclusive. Failure to furnish a probate
699 bond, if required, or written acceptance of guardianship required
700 under the provisions of said sections, shall be cause for termination of
701 the continued service of the fiduciary provided for in this section.

702 Sec. 25. This act shall take effect October 1, 2001.

Statement of Legislative Commissioners:

Technical changes were made for accuracy and gender neutrality.

JUD Committee Vote: Yea 40 Nay 0 JFS C/R FIN

FIN Committee Vote: Yea 38 Nay 3 JFS-LCO

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Cost (Probate Court Administration Fund)

Affected Agencies: Probate Courts (Judicial Department), Offices of the State Treasurer, State Comptroller, and Attorney General

Municipal Impact: None

Explanation**State Impact:**

Passage of the bill would result in costs between \$1 – 1.5 million to the Probate Court Administration Fund (PCAF), which is a nonGeneral Fund account within the Judicial Department. It is anticipated that the PCAF, which covers all the expenses of the probate court system, will provide the “seed money” for the establishment of the Probate Guaranty Fund (PGF). There will also be potential staffing costs associated with the administration of the fund. Finally, there will be an increase in workload for the probate courts with regard to claims against the fund.

The bill establishes a Probate Guaranty Fund to reimburse the public for certain losses resulting from the negligence or intentional acts of fiduciaries. According to the bill, whenever the probate court determines that a fiduciary has breached his duties resulting in a financial loss to an estate, the court may order restitution and any

injured beneficiary may claim funds from the PGF. This fund will consist of the aforementioned seed money and annual fees (\$50 - \$100) paid by fiduciaries who are accountable to the probate courts. The State Treasurer will be responsible for investing these monies.

Currently, fiduciaries must purchase bonds to insure against estates. In the event of breaches of fiduciary duties, injured parties pursue the bond companies to recover their losses. The purpose of the PGF would be to cover up to the first \$100,000 of such a loss. The remaining value of an estate would still have to be insured by additional bonds that are considerably more expensive than the PGF fee. The probate courts have indicated that over a five-year period, total default by fiduciaries was approximately \$6 million.

It should be noted that while the PCAF has experienced recent growth, the phase out of the succession tax is expected to have a negative impact on the PCAF. The PCAF fund balance in FY 1995 and FY 1999 was \$10.5 million and \$17.9 million respectively. At this time the Probate Court Administrator is unclear as to how much will be collected in fees, how many claims will result from the establishment of the PGF, and the extent of any PGF surplus. Nevertheless, passage of the bill places greater demands on the PCAF.

OLR Bill Analysis

sHB 5704

AN ACT CONCERNING THE CREATION OF A FUND TO PROTECT HEIRS AND BENEFICIARIES.**SUMMARY:**

This bill creates a Probate Guaranty Fund to reimburse the public for certain losses resulting from the negligence or intentional acts of fiduciaries who are accountable to the probate courts, other than trustees of *inter vivos* trusts or holders of a power of attorney. It creates procedures for the probate court to find that a fiduciary breached his duty and caused a financial loss to an estate, allows the court to order restitution, and allows an injured beneficiary to claim money from the fund. The bill's remedies are in addition to any existing rights and remedies.

The probate court administrator administers the fund and provides initial funding from the Probate Administration Fund. Fiduciaries and successor fiduciaries must pay a fee to the fund as a condition of appointment, if they are appointed by the probate court on or after October 1, 2001. Fiduciaries appointed before October 1, 2001 must pay the fee after this date when the court hears the fiduciary's periodic account or at the anniversary of appointment. The state treasurer invests the funds and the state comptroller accounts for them. The treasurer can commingle the money with other assets but she must invest it in a way that makes it available for the purposes of the Probate Guaranty Fund.

The bill also eliminates the requirement that certain fiduciaries post a bond and instead allows the probate court discretion to require a bond. The fiduciaries affected include those acting as administrators and executors of decedent's estates, successor fiduciaries, trustees of testamentary trusts, trustees for disappeared persons, guardians of the estates of minors or mentally retarded persons, and conservators. The bill specifies that the bond is in an amount necessary to protect the

estate.

EFFECTIVE DATE: October 1, 2001

PROBATE COURT ADMINISTRATOR

The bill requires the probate court administrator to:

1. adopt rules and procedures to govern the fund's operation and the filing and processing of claims;
2. inform the public about the fund;
3. file an annual report with the chairmen and ranking members of the Judiciary Committee, governor, attorney general, treasurer, chief justice of the Supreme Court, and chief court administrator about claims and amounts disbursed;
4. investigate and evaluate claims for reimbursement and determine the amount, terms, and period of payments to be made; and
5. annually, beginning October 1, 2001, prepare and submit a budget to the executive committee of the Probate Assembly.

In addition, he can refer claims to the attorney general and enter contracts as needed to discharge the fund's duties, including hiring legal counsel with the attorney general's approval.

PROBATE COURT HEARING ON BREACH OF DUTY

Under the bill, the probate court with jurisdiction over a fiduciary's estate can hold a hearing on an alleged breach of fiduciary duty that may have resulted in financial loss to an estate. It can do so on its own motion or on the application of any interested party. It must give reasonable notice to the fiduciary and other interested parties, and it must also notify the fund administrator. The administrator (or his designee) can participate fully in the hearing, examine and cross-examine witnesses, subpoena witnesses, and take the same actions as other parties at the hearing, including appealing to the Superior Court.

The burden of proof for claims against a fiduciary or by a fiduciary against any party is "a fair preponderance of the evidence." The judge must determine the proportionate share of the loss for which each person (including a fiduciary, claimant, or any party) is liable. Any aggrieved party can appeal the decision under the normal procedures for appeals from probate courts.

ELIGIBILITY FOR PAYMENTS

A beneficiary cannot receive any payment from the fund if he is the estate's only fiduciary and he breached his fiduciary duty to it. But a fiduciary who is a beneficiary can recover if other fiduciaries were solely responsible for the loss. No beneficiary whose intentional or reckless conduct contributed to the loss can recover from the fund. A negligent beneficiary can recover only if his negligence is less than 50% of the reason for the loss. In that case, he can recover the percentage of his loss that was not caused by his own negligence. If more than one beneficiary is negligent, a negligent beneficiary can recover a prorated amount as long as his negligence is less than 50% of the total negligence causing the loss.

RESTITUTION ORDERS

Under the bill, any party to the hearing (including a successor fiduciary acting for the estate) can seek a restitution order against a fiduciary once the probate court has found that a breach of fiduciary duty resulted in a financial loss to the estate. The restitution order can include an order of restoration, surcharge, or other equitable or legal relief. The court must provide notice and a hearing before determining the amount of the order. The order is payable either to the successor fiduciary or to the individual parties. Any party can appeal to the Superior Court under the normal procedures for appeals from the probate court. The order becomes final if there is no timely appeal. The order can be enforced like any Superior Court judgment. The Superior Court can issue execution on a final order as it does with other judgments, and it can award interest and attorney's fees.

CLAIMS TO THE PROBATE GUARANTY FUND

Under the bill, a person entitled to receive funds under a restitution

order who cannot collect from the responsible parties can submit a claim to the fund. The fund does not cover losses from acts of a trustee of an *inter vivos* trust (see BACKGROUND) or acts of holders of a power of attorney, even if the probate court assumes jurisdiction over them.

The administrator must provide application forms and the claimant must provide enough sworn information for the administrator to make a determination. The application must include a certified copy of all relevant probate court orders and any other information the administrator requires. The administrator (or his designee) must determine that the application is complete, authentic, and complies with the bill and any other regulations.

Before making a claim, an injured party must make reasonable attempts to gain restitution from the responsible party and other available sources of payment. A reasonable attempt is a demand for payment without receiving restitution, including filing an application for permission to sue on a probate bond and attempting good faith negotiations.

The administrator determines the amount to be paid and issues an invoice to the treasurer for payment from the fund. Payment cannot exceed \$100,000 for total losses whether caused by one or more fiduciaries or one or more breaches of duty. The bill does not allow payments to an estate unless its fiduciary has paid the bill's required fee.

If a claimant is eligible for an award and the fiduciary is an attorney or other state-licensed professional, the fund must determine whether the Client Security Fund or a similar fund will pay any portion of the beneficiary's loss. If the Client Security Fund makes a payment, the Probate Guaranty Fund is responsible for no more than one-half of the loss, up to \$50,000.

The administrator has discretion to order a payment that is less than the actual loss or the restitution order to preserve the fund's fiscal integrity. If the fund is insufficient to satisfy all or part of an authorized claim, the administrator must satisfy claims in the order they were originally determined when sufficient money is deposited in

the fund.

CONDITIONS ON AWARDS

Under the bill, a person receiving a payment from the fund must assign to the fund any claims against third parties for reimbursement for the fiduciary's misconduct. Under this agreement, the fund can assert the restitution order against responsible parties and sources up to the amount of payments made by the fund and the reasonable administrative and collection costs of enforcing the order. The fund may enforce the restitution order in the same manner as a Superior Court judgment. The Superior Court can award interest and attorneys fees when an application for executing the order is filed and a copy is certified by the probate court.

Under the bill, the fund also has a lien on real and personal property of the estate in which the breaching fiduciary had an interest as of the date the property vested in that fiduciary. The amount of the lien is the gross amount of the loss to the estate from the fiduciary's misconduct, including interest and attorney's fees, but reduced by any payments to the estate by third parties or injured beneficiaries. The administrator must release the lien when it is satisfied. He can, in appropriate cases, substitute additional security for property that the fiduciary requests to have released from the lien. The lien is not valid against a good faith purchaser, mortgagee, lienor, or judgment creditor if that person does not have notice of the lien and it is not filed or recorded at the town clerk's office.

FIDUCIARY FEES

The bill requires fiduciaries and successor fiduciaries appointed on or after October 1, 2001 to pay an annual fee determined by the administrator to be actuarially sufficient to maintain the fund's integrity but not more than (1) \$25 for an estate with less than \$50,000 in assets or (2) \$50 for a larger estate. Fiduciaries appointed before October 1, 2001 must pay the fee when the court hears the fiduciary's periodic account or on the anniversary of appointment. The payment is an expense of administering the estate.

A fiduciary of a decedent's estate need not pay the fee on the first

anniversary of his qualification if (1) he files a final account within 14 months of his qualification and (2) the probate court approves the account. (It is not clear whether the beneficiaries in this case are protected by the fund for losses.) If these conditions are not met, he must pay the annual fee within 10 days of notice that the fee is due.

Also, a fiduciary who prepaid a probate bond premium for more than one year with a value of at least the value of the assets of the estate need not pay the fee if the probate court determines the fund's protection is unnecessary. Trustees of *inter vivos* trusts, holders of a power of attorney, and state agencies appointed as conservators do not pay the fee even if they are subject to the jurisdiction of the probate court. A conservator of a ward or guardian of a minor with a net estate of less than \$5,000 and monthly income of less than \$1,000 need not pay the fee but his beneficiaries are entitled to recover under this bill.

SURPLUS FUNDS

If the administrator determines after an actuarial study that the fund has a surplus beyond what is reasonable for the fund's purpose, he can transfer the surplus to the Probate Administration Fund (up to the amount the Probate Administration Fund paid to the Probate Guaranty Fund). Any additional surplus must be used to reduce the payments required from fiduciaries under the bill or to increase the maximum amount of payments to injured parties.

ASSISTANCE OF THE ATTORNEY GENERAL

The administrator can seek the attorney general's assistance in recovering from responsible parties the amounts paid by the fund. Any recovered funds are paid to the Probate Guaranty Fund after covering disbursements and the attorney general's expenses.

BACKGROUND

Client Security Fund

Under statutory authority, the courts established a Client Security Fund to reimburse clients for losses resulting from the dishonest

conduct of attorneys practicing law in this state in the course of an attorney-client relationship.

Inter Vivos Trusts

“Inter vivos trusts” are those created and becoming effective during the settlor's lifetime.

Probate Assembly

The Probate Assembly is the assembly of all of the probate court judges. It meets to consider matters affecting the probate courts, including court administration and the improvement and uniformity of procedure and practice. The assembly can make recommendations to the probate court administrator.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute Change of Reference

Yea 40 Nay 0

Finance, Revenue and Bonding Committee

Joint Favorable Report

Yea 38 Nay 3